IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6038 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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BASHIR MOHMED G SHAIKH - Petitioner(s)

Versus

DHANGADRA MUNICIPALITY & 1 - Respondent(s)

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Appearance :
MR YV SHAH for Petitioner(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,
None for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 23/12/2005

ORAL JUDGMENT

1. The petitioner has filed this petition under Article 226 of the Constitution of India,

praying for the declaration that the order dated 30.6.1995 passed by the respondent placing the petitioner under suspension is malafide, without any authority and, therefore, the same is illegal and non-est. The petitioner has also prayed for quashing and setting aside the said suspension order dated 30.6.1995.

2. The petition was admitted and rule was issued on 16.4.1996. While issuing rule and considering the interim relief, this Court has passed an order and observed that it would be appropriate for the Executive Committee to consider whether the additional grounds which are incorporated in the order which were issued by the Chief Officer should come in the way of the petitioner in reporting for duty. In other words, if the Executive Committee stood by its Resolution dated 15.5.1995 under which the

petitioner was to be suspended only if he did not report to the place of transfer, it may consider whether he should be allowed to report at the place of transfer now in view of the petition against the transfer having been rejected. The Court, therefore, directed that a decision on this aspect may be taken expeditiously preferably within two weeks from the date on which a copy of the said order was received by the concerned authority.

3. The brief facts giving rise to the present petition and leading to passing of the aforesaid interim order on 16.4.1996 and the final order now by this Court are as under :-

4. The petitioner was serving in Dhanagdra Municipality since 16.2.1976. The petitioner was promoted as Store Keeper vide order dated 17.1.1991. It is the case of the petitioner

that the petitioner being Union leader, was not liked by the respondent and hence the petitioner was unnecessarily harassed. It is further stated that the petitioner in his capacity as General Secretary of Union had given Demand Notice vide his letter dated 4.5.1995, and pursuant to the said demand notice conciliation proceedings have commenced under the Conciliation Officer. Since the petitioner vide order dated 6.5.1995, has been malafide and without any authority transferred by the respondent, no.2, the said transfer order was challenged by preferring Special Civil Application No.4456/1995.

5. It is further stated that the said transfer order was challenged and notice was issued by this Court, making it returnable on 7.7.1995. Despite this, the respondent Nagarpalika passed resolution dated 15.5.1995 stating therein that

the petitioner should hand over his charge of store keeper and in case the petitioner did not give up his charge of store keeper post then only he was to be placed under suspension. It is this suspension which is under challenge in the present petition.

6. Mr.Y.V.Shah, learned advocate appearing for the petitioner has submitted that the conciliation proceedings were pending before the Conciliation Officer and, therefore, during the pendency of the conciliation proceedings, the respondent authorities should not have changed the service condition of the petitioner by transferring him and by placing him under suspension, if the petitioner did not hand over the charge of the store keeper. He has further submitted that the resolution compelling the petitioner to hand over the charge during the pendency of the petition

before this Court was absolutely arbitrary, contrary and was an illegal attempt on the part of Nagarpalika to over reach the process of Court. Mr.Shah has further submitted that as per the rules of the Municipality the respondent No.2 has no authority to transfer an employee who is earning the salary of more than Rs.200/- and, therefore, on this count also not only the transfer order and the resultant ensuing order of suspension was arbitrary, capricious and in violation of principles of natural justice. Mr.Shah has further submitted that the suspension was to be effected only by the appointing authority. In his case the appointing authority is the President of Municipality and, therefore, the suspension order which came to be passed by second respondent was illegal, bad in law and in violation of Articles 14 and 16 of the Constitution of India. Mr.Shah further

submitted that the Municipality has no authority to delegate his functions of suspension and punishment. In this view of the matter, the suspension order passed by the respondent No.2 was contrary to the provision of law.

7. Mr.Shah has further invited the attention of the Court to the provision contained in Section-48 of the Municipality Act. Section -48 enumerates different kind of penalties. Suspension is one of such penalties. Sub Section 2 of Section 48 says that any of the penalties mentioned in Sub Section -1 may be imposed on an officer or servant of a municipality by the authority competent to make the appointment of such officer or servant. Based on this provision Mr.Shah submitted that the petitioner was appointed by the general body of the Municipality. For that purpose he

has also invited the attention of the Court to the impugned order. The suspension order was passed by the Executive Committee of the Municipality and hence the said order was in violation of the provisions of Section 48(2) of the Act.

8. Mr.Shah further submitted that the suspension order was passed way back in 1995. More than 10 years have passed and still neither the Inquiry Officer was appointed nor any charge-sheet was submitted and hence the suspension order is required to be quashed and set aside on this ground.

9. In support of his submission Mr.Shah has relied on the decision of this Court **in the case of Nathubhai Parbat vs. Rajkot Nagarpalika, reported in Service Law Reporter, 1977(2) 768**, wherein this Court has taken the

view that on analysis of the Clause-C of Section 45 of the Gujarat Municipality Act, the President of the Municipality is not competent to suspend employee drawing more than Rs.200/-. The Court further took the view that the expression 'Control' means control over 'act' of employees and not regarding their services or pay, privileges and allowances and hence initiation and conduct of disciplinary proceedings does not fall within the term 'Control'. The Court further held that first part of the Clause-C of Section 45 cannot be invoked in order to impute the disciplinary power over the staff of the Municipality.

10. So far as delay in the disciplinary proceedings are concerned, Mr.Shah has relied on the decision of the Hon'ble Supreme Court **in the case of State of Andhra Pradesh, vs. N.Radhakishan, reported in AIR 1998 Supreme**

Court, 1833, wherein a report was given by the Director General, Anti Corruption Bureau, in the year 1987 about the irregularities in deviations and unauthorised construction in multi storied complexes in twin cities of Hyderabad and Secunderabad in collusion with Municipal authorities. Eleven officers were named including the respondent, who were said to be responsible for the abnormal deviations and unauthorised constructions. Without any reference to records merely on the report of the Director General, Anti Corruption Bureau, charges were framed against the respondent and ten others only in 1995 and all in verbatim and without particularizing the role played by each of the officers charged. There were four charges against the respondent. With three of them he was not concerned, He offered explanation regarding the fourth charge but the disciplinary authority did not examine the same

nor did it choose to appoint any inquiry officer. There was no explanation whatsoever for delay in concluding the inquiry proceedings all these years. It was nobody's case that respondent at any stage tried to obstruct or delay the inquiry proceedings. The Court, therefore, quashed the charge framed in 1995. The Court further held that the delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings.

11. Mr. Shah further submitted that more than 10 years have passed after the suspension order and yet the petitioner is subsistance allowance to the extent of 75%. This is contrary to the law laid down by this Court **in the case of**

Balvantrai Ratilal Patel vs. State of Maharashtra, reported in AIR 1968 Supreme Court 800, wherein it is held that the authority entitled to appoint the public servant is entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. But what amount should be paid to the public servant during such suspension will depend upon the provision of the statute or statutory rule in that connection. If there is any such provision, the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. Mr.Shah therefore submitted that since there is nothing prescribed by the Municipality, the petitioner is entitled to full emolument during the period

of suspension.

12. Lastly Mr.Shah has relied on the decision of Hon'ble Supreme Court **in the case of P.V.Mahadevan vs. M.D.Tamil Nadu Housing Board, reported in 2005 AIR SCW 5690**, wherein the Hon'ble Supreme Court has observed that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. The

Court further observed that, at this stage, it is necessary to draw the curtain and to put an end to the enquiry. The Court further observed that the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. The Court further observed that for the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer. The Court has accordingly quashed the charge issued against the appellant.

13. Based on the aforesaid facts and legal submissions Mr.Shah has strongly urged before this Court that the order of suspension passed by the respondent Municipality is absolutely illegal and the same deserves to be quashed and set aside.

14. The respondent Municipality has strongly opposed the prayer made in the present petition. A detailed affidavit in reply was filed on 26.7.1995. Mr.Harin P. Raval, learned advocate appearing for the respondent has submitted that the petitioner has flouted the transfer order passed by the respondent Municipality and has not handed over the charge of the post of store-keeper and did not submit account as well as cash balance. He has further submitted that the said facts were informed to the Executive Committee and the Executive Committee in its meeting held on 15.5.1995 resolved that if the petitioner did not report to his transferred place and did not hand over the charge of the post of store-keeper, the petitioner should be suspended pending inquiry and power to appoint Inquiry Officer was delegated to the President in accordance with the Rules. He has further

submitted that pursuant to the resolution passed by the Executive Committee on 15.5.1995, notice was issued on 17.5.1995, calling upon the petitioner to immediately hand over the charge of the post of store-keeper and to hand over necessary records, files, cash balance etc., within 24 hours. Mr.Raval further submitted that since the charge was not handed over by the petitioner another notice was issued on 19.5.1995 directing the petitioner to produce bills and deposit cash on hand to the tune of Rs.1,04,050,30 alongwith the accounts. He has further submitted that during this period the petitioner has asked for the leave which was not granted and the petitioner resumed duty on 30.5.1995 on his post of store-keeper. It is further submitted that again notice dated 14.6.1995 was issued on the petitioner directing him to hand over the charge on or before 19.6.1995. The said notice

was also not replied and, thereafter the order of suspension was passed on 30.6.1995.

15. Pursuant to the affidavit in reply filed by the respondent Municipality the petitioner has also filed affidavit in rejoinder and sur rejoinder was filed by the respondent authorities. The main submission of Mr.Raval was that the respondent authorities have power to pass the suspension order and challenge made by the petitioner on the basis of the provision contained in Section 48(2) of the Act is not tenable. He has further submitted that the powers of the Municipality are conferred under Section 53 of the Gujarat Municipality Act on Executive Committee and there is no infirmity in the suspension order. As far as delay is concerned, Mr.Raval submitted that the respondent Municipality has already appointed the Inquiry Officer. However, due to pendency

of petition before this Court the Inquiry Officer has not commenced inquiry and hence on this ground the suspension cannot be quashed by this Court. Mr.Raval further submitted that looking to the conduct and non compliance of the order passed by the Municipality and various illegalities and irregularities committed by the petitioner, the suspension order passed by the respondent authorities is just and proper and it does not deserve to be interfered with by this Court while exercising powers under Article 226 of the Constitution of India. Mr.Raval further submitted that the respondent Municipality will complete the inquiry within the period of six months from today and hence on this ground also the Court should not interfere with the order passed by the respondent Municipality.

16. After having heard the learned advocates

for the respective parties and after having gone through the record and proceedings which are produced before the Court and also order passed by this Court at the time of issuance of rule and several authorities cited before this Court, and after considering the relevant provision contained in the Gujarat Municipalities Act, the Court is of the view that the suspension order passed on 30.6.1995 giving effect to the resolution passed by the Executive committee on 15.5.1995 was only on the ground that if the petitioner did not hand over the charge of the Store-keeper, the petitioner would be suspended. This was a conditional order and it was by way of penalty. While considering the impugned suspension order, the provision contained in Section 48 required to be looked into. Sub Section-2 of Section 48 clearly lays down that penalty may be imposed on an officer or servant of a

municipality by the authority competent to make the appointment of such officer or servant. Here in the present case it has come on record that the petitioner is appointed by the general body. Admittedly the general body has not passed any resolution with regard to the suspension of the petitioner. It is true that Sub Section 3 of Section 50 of the Act stipulates that the power to make appointment in any post referred to in Sub Section-1 shall vest in the municipality or in the authority empowered by the municipality by rules made in this behalf under Section 271. By virtue of this provision, power to appointment is also vested in the municipality or in the authority empowered by the municipality by rules made in this behalf. Sub Section-3 of Section 53 stipulates that the Executive committee shall exercise the functions allotted to it under this Act and subject to any limitations

prescribed by the municipality especially in this behalf or generally b) rules made under clause (a) of section 271 and to the provisions of sections 49, 54 and 55 shall all the powers of the municipality. The Executive Committee can exercise powers of Municipality, provided such powers are allotted to it. Nothing has been pointed out to the Court that the power to suspend has been allotted to the Executive Committee. In this view of the matter, the resolution passed by the Executive Committee on 15.5.1995 and resultant effect given by the Chief Officer on 30.6.1995 suspending the petitioner is not just and proper and not in accordance with law.

17. Suspension order is challenged on the ground of delay. Admittedly, in the present case the suspension order was passed on 30.6.1995. More than 10 years have gone and still no inquiry

has been conducted nor it has been proceeded with. As per the law laid down by the Hon'ble Supreme Court vide judgment referred to hereinabove it is clear that the period of 10 years is too long period and it cannot be condoned on any ground. No explanation has been given, pendency of this petition is not a ground not to initiate proceedings against the petitioner. This Court has not granted any stay. The respondent authority could have proceeded with the inquiry and completed it however, this has not been done. It appears to the Court that such course adopted by the respondent Municipality is not permissible and the Court is deprecated such practice.

18. It is also one of the important facts that this Court has passed specific order on 14.6.1996, directing the respondents to consider the matter when the petitioner has

shown his willingness to resume his duty when the petition challenging the transfer order has been dismissed by this Court. The respondent authorities have given the reasons while passing the impugned suspension order. Thereafter altogether on different grounds vide communication dated 28.4.1996, the petitioner was not allowed to resume his duties to the transferred place. This shows that respondent authorities, in any case, wanted to put the petitioner under suspension and even after 1996 the inquiry was neither initiated nor proceeded with.

19. Taking overall view of the matter, the Court is of the view that the respondent authorities are not right in placing the petitioner under suspension for the period of more than 10 years. The impugned suspension order is, therefore, quashed and set aside. This

petition is allowed. Rule is made absolute without any order as to costs.

(K. A. PUJ, J.)

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